

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ACEMCO INCORPORATED,)
EATON CORPORATION,)
FORD MOTOR COMPANY,)
LINDE INC. (ON BEHALF OF)
LINDE GAS, INC.),)
MICHIGAN AUTOMOTIVE)
COMPRESSOR, INC.,)
NACHI MACHINING TECHNOLOGY)
COMPANY,)
PERMA-FIX OF MICHIGAN, INC.)
(ON BEHALF OF CHEM MET)
SERVICES, INC.),)
RIMA MANUFACTURING COMPANY,)
SAMUEL, SON & CO. (USA) INC.,)
SCHULTZ, INC.,)
TRIMAS CORPORATION (ON BEHALF)
OF HI-VOL PRODUCTS AND)
DRAW-TITE),)
VALASSIS COMMUNICATIONS,)
INCORPORATED,)
WEAVERTOWN TRANSPORT)
LEASING, INCORPORATED,)
and)
WORTHINGTON STEEL OF)
MICHIGAN,)
)
Defendants.)

Civil Action No. 22-10640

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Dearborn Refining Company Site in Dearborn, Michigan (“the Site”).

B. In August 2007, EPA and a group of respondents entered into an Administrative Settlement Agreement and Order on Consent (“AOC”). The AOC is attached as Appendix A. Each of the defendants entering into this Consent Decree (“Settling Defendants”) is a party to the AOC.

C. The AOC required Settling Defendants to perform response work at the Site. Settling Defendants have performed and continue to perform response work at the Site under the AOC.

D. EPA and Settling Defendants have implemented several agreements under the auspices of the AOC regarding Operation, Maintenance, and Monitoring (“OM&M”). On November 30, 2020, EPA approved Settling Defendants’ November 24, 2020 Operation, Maintenance, and Monitoring Plan (“OM&MP”) (Amendment #3) and Standard of Care Plan, under which Settling Defendants continue to perform response work at the Site.

E. Settling Defendants do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“AOC” shall mean the Administrative Settlement Agreement and Order on Consent attached as Appendix A. “AOC” shall also include plans or other documents governing work under the AOC once approved by EPA, such as the November 24, 2020 OM&MP (Amendment #3) and November 24, 2020 Standard of Care Plan shown in Appendix B and other work plans, safety plans, or the like.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

“Consent Decree” shall mean this Consent Decree.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Dearborn Refining Company Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all direct and indirect costs incurred and paid by the United States on or after April 1, 2020, that the United States incurs in reviewing or developing deliverables submitted pursuant to the AOC, or otherwise implementing, overseeing, or enforcing this Consent Decree, the AOC, or the work under the AOC, including, but not limited to: payroll costs, contractor costs, travel costs, laboratory costs, costs incurred due to emergency releases at the Site, the cost of attorney time and any monies paid to secure or enforce access to land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce institutional controls including the amount of just compensation, the costs incurred pursuant to dispute resolution, Section VIII of the AOC (Dispute Resolution), and litigation costs incurred related to enforcement of the AOC or this Consent Decree.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that the United States has paid at or in connection with the Site through March 31, 2020.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean the following parties:

ACEMCO Incorporated,
Eaton Corporation,
Ford Motor Company,
Linde Inc. (on behalf of Linde Gas, Inc.),
Michigan Automotive Compressor, Inc.
Nachi Machining Technology,
Perma-Fix of Michigan, Inc. (on behalf of Chem Met Services,
Inc.),
Rima Manufacturing Company,
Samuel, Son & Co. (USA) Inc.,
Schultz Inc.,
TriMas Corporation, (on behalf of Hi-Vol Products and Draw
Tite),
Valassis Communications, Inc.,
Weavertown Transport Leasing,
and
Worthington Steel of Michigan.

“Site” shall mean the Dearborn Refining Company Site, encompassing approximately 6.5 acres, located at 3901 Wyoming Ave in Dearborn, Michigan.

“State” shall mean the State of Michigan.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF PAST RESPONSE COSTS

4. **Payment by Settling Defendants for Past Response Costs.**

Within 60 days after the Effective Date, Settling Defendants shall pay to EPA \$880,000.00.

5. Settling Defendants shall make payment at <https://www.pay.gov> in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the Eastern District of Michigan after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, Site/Spill ID Number B5E7, and DJ Number 90-7-1-704/8, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to Grant P. Gilezan, Esq., Dykema Gossett, PLLC, 400 Renaissance Center, Detroit, MI 48243 (313-568-6789; ggilezan@dykema.com) on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XVII (Notices and Submissions).

6. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the Dearborn Refining Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of payment, Settling Defendants shall send to EPA and DOJ, in accordance with Section XVII (Notices and Submissions), a notice of this payment including references to the CDCS Number, Site/Spill ID Number B5E7, and DJ Number 90-7-1-704/8.

VI. PAYMENT OF FUTURE RESPONSE COSTS

8. **Payments by Settling Defendants for Future Response Costs.** Settling Defendants shall pay to EPA 50% of all Future Response Costs not inconsistent with the NCP.

9. **Periodic Bills For Future Response Costs.** On a periodic basis, EPA will send Settling Defendants a bill requiring payment of Future

Response Costs, that includes a cost report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Settling Defendants shall make all payments within 60 days after Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 11, at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site/Spill ID Number B5E7, the DJ Number 90-7-1-704/8, and the purpose of the payment. Settling Defendants shall send to DOJ and EPA, in accordance with Paragraph 7, a notice of this payment including these references.

10. **Deposit of Future Response Costs Payments.** The total amount to be paid by Settling Defendants pursuant to Paragraph 9 (Periodic Bills) shall be deposited by EPA in the Dearborn Refining Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Dearborn Refining Company Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund, for this reason, shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

11. **Contesting Future Response Costs.** Settling Defendants may submit a Notice of Dispute, initiating the procedures of Section VIII (Dispute Resolution), regarding any Future Response Costs billed under Paragraph 8 (Payments by Settling Defendants for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 60 days after receipt of the bill and must be sent to the United States pursuant to Section XV (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Settling Defendants submit a Notice of Dispute, Settling Defendants shall, within the 60-day period and as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust

company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 7 days after the resolution of the dispute. Settling Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 5 (instructions for past response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

12. **Interest.** In the event that any payment for Past Response Costs or Future Response Costs required under this Section is not made by the date required, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 13 (Stipulated Penalties).

VII. FAILURE TO COMPLY WITH CONSENT DECREE

13. **Stipulated Penalty.** If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) or Paragraph 8 (Payment of Future Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA,

as a stipulated penalty, in addition to the Interest required by Paragraph 12, \$500 per violation per day for the first thirty (30) days that such payment is late and \$1,000 per violation per day thereafter that such payment is late.

14. Stipulated penalties are due and payable within 60 days after the date of the demand for payment of the penalties by EPA. Settling Defendants shall make all payments at <https://www.pay.gov> in accordance with the procedures under Paragraph 5 and send notice of this payment in accordance with Paragraph 6 (Notice of Payment). Settling Defendants shall indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

15. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

16. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

17. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

18. The obligations of Settling Defendants to pay amounts owed to the United States under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

19. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Past Response Costs) and Section VI (Payment of Future Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. DISPUTE RESOLUTION

20. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes under this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

21. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

22. **Statements of Position**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendants.

b. Within 45 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. Within 45 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

23. The Director of the Waste Management Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 22. The Waste Management Division Director's decision shall be binding on Settling Defendants unless, within 30 days after receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be

resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

24. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, except as provided in Paragraph 11 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 11. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 13. (Stipulated Penalties).

IX. COVENANTS BY PLAINTIFF

25. **Covenants for Settling Defendants by United States.** Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Future Response Costs or Past Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

26. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 25 (Covenants for Settling Defendants by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for failure of Settling Defendants to meet a requirement of the AOC;

- c. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Future Response Costs;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- e. criminal liability;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XI. COVENANTS BY SETTLING DEFENDANTS

27. **Covenants by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Michigan, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for the Site and this Consent Decree.

28. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

29. **Waiver of Claims by Settling Defendants**

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before February 16, 2006, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) **De Minimis/Ability to Pay Waiver.** For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers

(1) The waivers under this Paragraph 29 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

(2) The waiver under Paragraph 29.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to

Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

30. Except as provided in Paragraph 29 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XI (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

31. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs and Future Response Costs.

32. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective

Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

33. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

34. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section IX.

XIII. ACCESS TO INFORMATION

35. Subject to Paragraph 36, Settling Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree

36. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 36.b, and except as provided in Paragraph 36.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each

recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
- (2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

37. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

38. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. RETENTION OF RECORDS

39. Until 10 years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site. This record retention requirement shall apply regardless of any corporate retention policy to the contrary.

40. At the conclusion of the record retention period, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 36 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

41. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XV. NOTICES AND SUBMISSIONS

42. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov
Re: DJ# 90-7-1-704/8

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-7-1-704/8

As to EPA: Richard Clarizio
EPA Region 5, Office of Regional Counsel
clarizio.richard@epa.gov

Brian Kelly
EPA Region 5, Superfund Division
kelly.brian@epa.gov

As to Settling Defendants: Grant Gilezan
Dykema
400 Renaissance Center
Detroit, Michigan 48243
ggilezan@dykema.com

XVI. RETENTION OF JURISDICTION

43. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

44. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

45. The following appendices are attached for reference:

Appendix A is the 2007 AOC.

Appendix B is the November 24, 2020 Operation, Maintenance, and Monitoring Plan (Amendment #3) and Standard of Care Plan approved by EPA on November 30, 2020.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

46. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

47. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

48. Each undersigned representative of a Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his or her designee certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

49. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

50. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. FINAL JUDGMENT

51. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2022.

United States District Judge

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

**FOR THE UNITED STATES OF
AMERICA:**

Dated: 3/22/2022

TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources
Division

By: 
LAUREN D. GRADY
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2794
Lauren.grady@usdoj.gov
IL# 6315393

DAWN N. ISON
United States Attorney

PETER A. CAPLAN
Assistant U.S. Attorney
211 W. Fort Street, Ste. 2001
Detroit, MI 48226
(313) 226-9784
P 30643
Email: peter.caplan@usdoj.gov

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

DEBRA
SHORE

Digitally signed by
DEBRA SHORE
Date: 2022.03.20
09:30:55 -05'00'

DEBRA SHORE
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604

RICHARD
CLARIZIO

Digitally signed by
RICHARD CLARIZIO
Date: 2022.03.21
09:48:04 -05'00'

RICHARD CLARIZIO
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR

ACEMCO INCORPORATED

Dated: February 9, 2022



Name: John Couturier

Title: President

Address:

7297 Enterprise Drive

Spring Lake, MI 49456-9695

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Ronald E. Baylor

Title: Attorney

Address: 277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007

Phone: (269) 381-7030

email: baylor@millercanfield.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
EATON CORPORATION:
[Print name of Settling Defendant]

Dated: February 1, 2022



Name (print): Valerie M. Hanna,
as authorized representative of Eaton
Corporation
Title: Member, Hanna Law Offices LLC
Address: 104 Renaissance Ct.,
Chagrin Falls, OH 44023

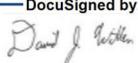
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Mark Brinkman
Title: Major Account Manager
CT Corporation
Address: 1300 East 9th Street
Cleveland, OH 44114
Phone: 216-406-8536
email: mark.brinkman@wolterskluwer.com

Signature Page for Consent Decree Regarding Dearborn Refining Company Superfund Site

FOR
FORD MOTOR COMPANY:
[Print name of Settling Defendant]

Dated: Feb-04-2022 _____

DocuSigned by:

22B1409E26D7402... _____

Name (print): Dave Witten

Title: Assistant Secretary

Address: One American Road, Dearborn, MI 48126

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: The Corporation Company
Title: Registered Agent
Address: 40600 Ann Arbor Road E, Suite 201, Plymouth, Michigan 48170
Phone: _____
email: _____

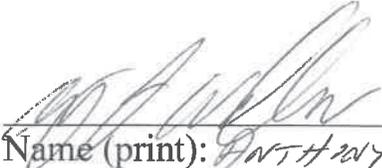
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Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
LINDE INC. (ON BEHALF OF LINDE
GAS, INC.):

Dated: 2/4/22


Name (print): ANTHONY J WALLACE
Title: VP Global SHEQ
Address: 1585 Sandust Rd
Suite 300
Spring, TX 77380

Agent Authorized to Accept Service on Behalf of Above-signed Party:

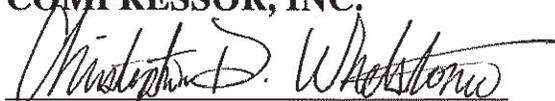
Name: Corporation Service Company
Title: _____
Address: 2900 West Road, Suite 500
East Lansing, MI 48823
Phone: (888) 690-2882
email: sop@cscglobal.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR

**MICHIGAN AUTOMOTIVE
COMPRESSOR, INC.**

Dated: JAN. 27, 2022



Name: CHRISTOPHER D. WHETSTONE

Title: GENERAL MANAGER

Address:

2400 North Dearing Road

P.O. Box 69

Parma, MI 49269

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Ronald E. Baylor

Title: Attorney

Address: 277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007

Phone: (269) 381-7030

email: baylor@millercanfield.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR

NACHI AMERICA INC.

Dated: 3-14, 2022



Name: David Petrimoulx

Title: Vice President

Address:

715 Pushville Road

Greenwood, IN 46143

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Ronald E. Baylor

Title: Attorney

Address: 277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007

Phone: (269) 381-7030

email: baylor@millercanfield.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR

Perma-Fix of Michigan, Inc., on behalf of Chem-Met Services, Inc. •

[Print name of Settling Defendant]

Dated: _____

 2-9-22

Name (print): Mark Duff

Title: President

Address: 1093 Commerce Park Drive, Ste. 300
Oak Ridge, TN 37830

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: URS Agents LLC

Title: N/A

Address: 40600 Ann Arbor Rd. E., Ste. 200
Plymouth, MI 48170

Phone: (800) 567-4397

email: N/A

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR

Rima Manufacturing Company:

[Print name of Settling Defendant]

Dated: 2/15/22



Name (print): Edward J. Engle III

Title: President

Address: 3850 Munson Hwy.
Hudson, MI 49247

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Amy Spratt
Title: Treasurer/Resident Agent
Address: 3850 Munson Hwy.
Hudson, MI 49247
Phone: (517) 448-8921
email: aspratt@rimamfg.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
SAMUEL, SON & CO. (USA) INC.:

Dated: January 24, 2022



Name (print): Cecile S. Chung
Title: General Counsel & Corporate
Secretary
Address: 1900 Ironoak Way
Oakville, Ontario
Canada L6H 0N1

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Lanny Kurzweil
Title: Partner, McCarter & English,
LLP
Address: 100 Mulberry Street
Four Gateway Center
Newark, NJ 07102
Phone: (973) 639-2044
email: lkurzweil@mccarter.com

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Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
SCHULTZ, INC. :
[Print name of Settling Defendant]

Dated: 2-11-2022



Name (print): SAL WILSON
Title: PRESIDENT / CEO
Address: 750 LAKE LANSING RD.
LANSING, MI 48906

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Sal A. Wilson
Title: President / CEO
Address: 750 Lake Lansing, Lansing MI 48906
Phone: 517 484 7989
email: salw@schultz-inc.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
TriMas Corporation:
[Print name of Settling Defendant]

Dated: January 31, 2022

Name (print): *Jodi Robin*
Title: General Counsel and Secretary
Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jodi Robin
Title: General Counsel
Address: 38505 Woodward Ave, Suite 200
Phone: BHills, MI 48304
email: 248-631-5475
Jodi.Robin@trimascorp.com

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Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

**FOR
VALASSIS COMMUNICATIONS, INC.**

Dated: 2/1/2022

Lee Ann Stevenson _____
LEE ANN STEVENSON
General Counsel & Chief Administrative
Officer
15955 La Cantera Pkwy
San Antonio, TX 78256

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: C T Corporation System
Title: Registered Agent
Address: 40600 Ann Arbor Road East
Suite 201
Plymouth, MI 48170
Phone: _____
email: _____

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
Weavertown Transport Leasing, Inc.
[Print name of Settling Defendant]



Dated: January 24, 2022

Name (print): Daryl Heiser
Title: Vice President
Address: 201 South Johnson Road Suite 201
Houston, PA 15342

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: John F. Stoviak
Title: SAUL EWING ARNSTEIN &
LEHR
Address: 1500 Market Street 38th Floor
Philadelphia, PA 19102-2186
Phone: 215-972-1095
email: John.Stoviak@saul.com

Signature Page for Consent Decree Regarding Dearborn Refining Company
Superfund Site

FOR
Worthington Steel of Michigan:

Dated: February 24, 2022


Name (print): Patrick J. Kennedy
Title: Vice President – Secretary
Address: 200 Old Wilson Bridge Road
Columbus, OH 43085

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Patrick J. Kennedy
Title: General Counsel
Address: 200 Old Wilson Bridge Road
Columbus, OH 43085
Phone: (614) 840-3355
email:
Patrick.kennedy@worthingtonindustries.com